

MINTZ LEVIN
COHN FERRIS
GLOVSKY AND
POPEO PC

Washington
Boston
New York
Reston
New Haven

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Howard J. Symons

Direct dial 202 434 7305
hjsymons@mintz.com

June 6, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Presentation
MB Docket No. 02-52

Dear Ms. Dortch:

This letter supplements the information in Cablevision Systems Corp. ("Cablevision")'s filings and ex parte presentation in the above-captioned docket regarding local franchising authorities ("LFAs")'s continued attempts to regulate and impose fees on the provision of cable modem service and the detrimental effect such local regulation has on Cablevision's deployment of its Optimum Online cable modem service.

Several local franchising authorities in Cablevision's service areas have disregarded the substance and effect of the Commission's *Declaratory Ruling* classifying cable modem service as an interstate information service and have actively sought to regulate and collect fees on the service. Others stand poised to regulate the service if not specifically and wholly preempted from doing so by the Commission. Such local regulation, if not unambiguously preempted, will stifle the continued innovative development and deployment of cable modem service.

For example, one town's franchise renewal proposal -- given to Cablevision just last month -- sets forth extensive "consumer protection" standards that "apply to all services provided by a franchisee over a cable system" including "cable modem service, *whether or not such service is considered a cable service under applicable law*" (emphasis added). The 16 pages of regulations the town seeks to apply to cable modem service are extremely broad and detailed, and often do not make sense as applied to cable modem service.

Compliance with such detailed regulations would be burdensome and difficult, and completely unnecessary given the competitive alternatives for cable modem service available in

Cablevision's service area. Notably, Cablevision advertises and offers Optimum Online on a uniform basis throughout its service territory, which is limited to the New York metropolitan area despite encompassing more than 400 local franchising authorities. If each LFA instituted its own regulatory regimes for cable modem service -- governing, for example, the length and terms of subscriber contracts and permissible charges -- marketing the service would be extremely confusing to both Cablevision and subscribers. These disparities would be particularly problematic for Cablevision, given its geographically concentrated service area. The increased costs of regulatory compliance would add to the price of cable modem service, undermining its competitiveness and hindering its continued deployment.

If the proposal noted above were adopted by the town, moreover, it would encumber almost every aspect of the provision of cable modem service, including installation, repairs, and service interruptions. In addition to the disruptive effect of intrusive local regulation on the deployment of Optimum Online, the proposed requirements themselves, designed originally for the regulation of cable service, are inappropriate as applied to cable modem service. A rule that prohibits installation charges because the cable drop is two hundred feet or less in length does not take into account the additional specialized equipment required for cable modem service, and may deprive Cablevision of the flexibility and ability to tailor its offers and incentives (*e.g.*, offering free installation) to competitive conditions. These problems would be exacerbated if differing requirements were imposed by each LFA.

Another town has been seeking payment of franchise fees on cable modem service (and any other "internet access," "information service" or "non-cable communications service other than telecommunications service") from Cablevision since 2001, well before Cablevision even offered cable modem service there. While the town "recognize[s] that there is a dispute as to the legal status of some services, such as cable modem service," it nonetheless asserts that "even if the cable modem service were not cable service, the company would be required to pay a fee to the municipalities for use and occupancy of the right-of-way to provide that service" and that "[i]t is not necessary for us to agree what the service is, but we do need a clear understanding that fees will be paid" (emphasis added).

At least one other LFA has indicated its intent to commence a proceeding to regulate cable modem service if not specifically forbidden from doing so. In a recent proceeding, in response to inquiries regarding regulating cable modem service, the New Jersey Board of Public Utilities, the LFA in New Jersey, stated that "if and when the FCC allows the Board to regulate this service, the Board will propose a separate rulemaking to address this issue." *Regulations of Cable Television; Proposed Readoption with Amendments: N.J.A.C.14:18*, BPU Docket No. CX02040265 (Jan. 6, 2003).

As the foregoing demonstrates, absent clear and unambiguous preemption of local cable modem service regulation, Cablevision and other cable operators will be subject to a confusing patchwork of inconsistent local regulation. While this may not stop broadband deployment in its tracks, it will add to its costs and uncertainty and therefore to the price for cable modem service. Consumers will also face a less immediate but still significant cost as cable operators, fearful of

being second-guessed by local regulators, move more cautiously in rolling out service innovations and advancements.

Pursuant to sections 1.1206(b)(1) and (2) of the Commission's rules, a copy of this letter and attachment is being filed electronically with the Office of the Secretary. Copies are also being served electronically on the Commission staff listed below. Any questions concerning this submission should be addressed to the undersigned.

Sincerely,

/s/ Howard J. Symons

Howard J. Symons

cc: Barbara Esbin
Kyle Dixon
Marjorie Reed Greene
John Norton
Mary Beth Murphy
Peter Corea
Eric Bash
Alison Greenwald
Lara Leibman
Lee Schroeder